

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of San Diego Gas & Electric Company
(U 902 E) for Authorization to Recover Costs Related to
the 2007 Southern California Wildfires Recorded in the
Wildfire Expense Memorandum Account (WEMA)

Application 15-09-010
(Filed September 25, 2015)

**POST PREHEARING CONFERENCE STATEMENT OF
SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)**

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Following the February 22, 2016 Prehearing Conference in this proceeding, San Diego Gas & Electric Company (“SDG&E”) submits this Post Prehearing Conference Statement. This statement sets forth SDG&E’s positions on several issues that were discussed during the Prehearing Conference, or were left to the parties to discuss afterwards, including: (1) the procedural schedule; (2) the contents of Phase 2 supplemental testimony; (3) issues that are within the scope of this proceeding; and (4) importing records from prior proceedings.

I. PROCEDURAL SCHEDULE

At the Prehearing Conference in this proceeding, the Administrative Law Judge (“ALJ”) indicated that this proceeding will be phased and that the schedule will be far lengthier than the schedule proposed by SDG&E in its Application.¹ Tr. at 8. The ALJ indicated that she would recommend that the Commission “essentially follow the schedule that was laid out by Joint Intervenors”² in their prehearing conference statement. *Id.* at 10; 20. The ALJ, however, indicated that the Phase 1 hearing would occur in January, rather than in December as Joint

¹ Consistent with Rule 2.1(c) of the Commission’s Rules of Practice and Procedure, SDG&E initially proposed a schedule with a deadline for resolving the proceeding of “18 months or less (ratesetting or quasi-legislative proceeding).”

² The Joint Intervenors include Mussey Grade Road Alliance, Office of Ratepayer Advocates, Protect Our Communities Foundation, Ruth Henricks, San Diego Consumer Action Network, The Utility Reform Network (“TURN”) and Utility Consumers’ Action Network (“UCAN”).

Intervenors had proposed. *Id.* at 20. After SDG&E raised several concerns regarding the Joint Intervenors' schedule, the ALJ directed the parties to work together on a schedule. *Id.* at 21-27; 75-76. The ALJ also indicated that, despite SDG&E's concern about the fact that the Joint Intervenors were proposing a final decision in June 2018, almost three years after the filing of the Application, the Commission lacks resources to make the schedule any shorter. *Id.* at 23.

SDG&E and the Joint Intervenors have met and conferred regarding the procedural schedule, and the parties were able to reach agreement regarding Phase 1 dates, an agreement was not reached on a Phase 2 procedural schedule. SDG&E understands that Joint Intervenors will request that the Commission defer establishing dates for a Phase 2 schedule until after Phase 1 is completed, and that their primary reasons for that deferral are that Phase 2 dates are uncertain and may need to be pushed back, and, relatedly that they have not yet seen SDG&E's supplemental Phase 2 testimony.

SDG&E requests that the Commission establish the Phase 2 schedule set forth below for several reasons. First, as noted at the Prehearing Conference, SDG&E believes that it is entitled to have its Application considered and resolved in a reasonable amount of time. While June 2018 is far longer than SDG&E originally proposed as a date for a final decision in this proceeding, a decision in that time frame at least gives SDG&E *some expectation* of when it can expect to have this case resolved, which is important to its stakeholders, and for planning its activities in this proceeding. Second, establishing procedural dates is entirely consistent with the Commission's usual practice in Scoping Memos, whereas leaving the time for resolving a proceeding open-ended is not. Third, no party is prejudiced by establishing a schedule for Phase 2 now. It may well turn out that, for various reasons, parties need more time. Such issues can be explored at the Phase 2 Prehearing Conference, which, in the proposed schedule below, is

scheduled to occur after SDG&E submits supplemental Phase 2 testimony. Thus, intervenors concerned about the scope of that supplemental testimony will have an opportunity to raise such concerns. But to SDG&E if no dates are established, parties that have an interest in delaying resolution of this case may seek to do just that. Further, in light of the ALJ's statement about resource constraints at the Commission, which presumably includes resources for holding hearings, SDG&E believes it is most efficient to schedule dates now, before it becomes increasingly difficult to do so.

SDG&E's Proposed Proceeding Schedule

Event	Date	Comment
Application Filed	September 25, 2015	
Prehearing Conference	February 22, 2016	
Scoping Ruling Issued	TBD	
SDG&E to make electronically available materials listed in Appendix A of October 30, 2009 Settlement Agreement in I.08-11-006 and I.08-11-007	March 21, 2016	
Opening Comments on Threshold Legal/Policy Issues Regarding SDG&E's Right to Recover Costs from Ratepayers	30 days after issuance of Scoping Ruling	
Reply Comments on Threshold Legal/Policy Issues	15 days after Opening Comments	

Event	Date	Comment
Proposed Decision on Threshold Legal/Policy Issues		PD issuance is optional, depending on whether the ALJ/Assigned Commissioner determine the filed comments warrant dismissal of all or part of the application. Otherwise, filed comments would inform decision(s) in Phase 1 (and, if necessary, Phase 2)
Final Decision on Threshold Legal/Policy Issues		[See above]
ORA Testimony in Phase 1	October 3, 2016	
Intervenor Testimony in Phase 1	October 10, 2016	
Phase 1 Rebuttal Testimony	December 9, 2016	
Phase 1 Evidentiary Hearings	January 23-27, 2016	
Opening Briefs on Phase 1	February 20, 2017	
Reply Briefs on Phase 1	March 6, 2017	
Phase 1 Proposed Decision*	June 5, 2017	
Phase 1 Final Decision*	July 6, 2017	
SDG&E Supplemental Phase 2 Testimony	July 20, 2017	
Phase 2 Prehearing Conference	August 3, 2017	
ORA Phase 2 Testimony	November 6, 2017	
Intervenor Phase 2 Testimony	November 13, 2017	
Phase 2 Rebuttal Testimony	December 15, 2017	
Phase 2 Evidentiary Hearings	January 8-15, 2018	
Phase 2 Opening Briefs	February 9, 2018	

Event	Date	Comment
Phase 2 Reply Briefs	February 23, 2018	
Phase 2 Proposed Decision*	May 24, 2018	
Phase 2 Final Decision*	June 28, 2018	

* Denotes estimated dates for Commission action

II. PHASE 2 SUPPLEMENTAL TESTIMONY

At the Prehearing Conference, the ALJ granted the request made by TURN to direct SDG&E to supplement its Phase 2 testimony. Tr. at 69-70; 72. Based on discussions with Joint Intervenors, SDG&E expects that those parties will seek to have the Commission adopt a detailed list of issues for supplemental Phase 2 testimony in its Scoping Memo. While SDG&E is willing to supplement the Phase 2 testimony, and more particularly, to provide additional testimony and/or evidence regarding the reasonableness of the line items in Appendix 4 of the September 25, 2015 Prepared Direct Testimony of R. Craig Gentes,³ SDG&E believes that it should not be required to follow Joint Intervenors' "outline" of SDG&E supplemental Phase 2 testimony. First, SDG&E bears the burden of proof, and it is its prerogative as to how it meets that burden. SDG&E may take a different view as to how to show the reasonableness of various costs. An applicant is not required to agree to the scope and contents of its testimony with intervenors. If Joint Intervenors believe that SDG&E has fallen short of its burden in Phase 2, they can make those arguments at that time.

Further, the ALJ did not direct the parties to resolve the precise contours of what would be included in that testimony. The ALJ did direct the parties to discuss the issue, but allowed that if an agreement could not be reached, "we can revisit that issue at a Phase 2 prehearing

³ This Appendix sets forth the costs and debits that ultimately lead to the \$379 million that SDG&E seeks to recover.

conference.” Tr. at 70. SDG&E remains willing to discuss this issue further with Joint Intervenors but does not believe it is appropriate to adopt an “outline” of that testimony at this time, particularly since the whole point of phasing this case is that the issues in each phase are to be resolved in that phase.

III. THE ISSUES IN THIS PROCEEDING

During the Prehearing Conference, the ALJ solicited input on the scope of the issues to be addressed in the Scoping Memo. Tr. 10-14. The parties seemed to be in agreement that the issues should be laid out in a general fashion. *Id.* SDG&E requested adoption of the issues list it submitted in its Prehearing Conference Statement,⁴ noting, however, that if phasing is adopted, those issues would need to be re-ordered. *Id.* at 13. Since it now appears that this proceeding will be phased, SDG&E hereby resubmits its list of issues, in the appropriate order.

Phase 1 Issues

The Phase 1 issues include:

- (1) whether SDG&E’s operational and engineering practices were reasonable with respect to:
 - (a) the facilities alleged to have been involved in the ignition of the Witch Fire,
 - (b) the facilities alleged to have been involved in the ignition of the Guejito Fire, and
 - (c) the facilities alleged to have been involved in the ignition of the Rice Fire;
- (2) whether factors beyond SDG&E’s control contributed to the ignition, spread and damages caused by:

⁴ See “Prehearing Conference Statement of San Diego Gas & Electric Company” at 7-8.

- (a) the Witch Fire,
- (b) the Guejito Fire, and
- (c) the Rice Fire.

Phase 2 Issues

The Phase 2 issues include the reasonableness of:

- (1) SDG&E's decision to pursue settlement of the claims asserted in the 2007 Wildfire Litigation, in light of the applicability of inverse condemnation and the accompanying strict liability standard that California courts have imposed on the basis that utilities can spread costs through rates;
- (2) the process SDG&E employed to settle those claims at the lowest reasonable cost; and
- (3) SDG&E's efforts to substantially reduce the amount of Wildfire Costs⁵ for which it seeks recovery through liability insurance coverage; recoveries from third parties obtained through settlements; and through voluntary contributions representing 10% of the remaining CPUC regulatory asset, and an annual credit of miscellaneous revenues collected above the amount authorized. While FERC recoveries are not subject to review by this Commission, those recoveries have also reduced the amount of costs SDG&E seeks to recover.

Based on its reasonableness determination regarding these issues, the Commission should determine:

⁵ As noted in the Application, the Wildfire Costs refers to the total \$2.4 billion in costs and legal fees that SDG&E has incurred to resolve third-party damage claims arising from the Witch, Guejito and Rice Fires in 2007.

- (4) whether SDG&E is entitled to recover the proposed \$379 million of WEMA Costs.

Lastly, SDG&E proposed three scenarios for rate recovery of the WEMA Costs – amortization periods of six, eight and ten years. Accordingly, the Commission should also determine:

- (5) whether rate recovery of WEMA Costs should be amortized over six, eight or ten years.

IV. UCAN’S SUPPOSED PRECEDENT FOR IMPORTING RECORDS FROM OTHER PROCEEDINGS WHOLESALE INTO THIS RECORD

SDG&E has previously set forth its position on why importing the entire records from the investigations the Commission initiated into the Witch, Guejito and Rice Fires in I.08-11-006 and I-08-11-007 (collectively, the “OIs”) and the Wildfire Expense Balancing Account (“WEBA”) proceeding in A.09-08-020 is not appropriate, while allowing that there may be individual cases or circumstances in which those materials can and should be offered into evidence and made part of the record here, on a case-by-case basis.⁶ On February 29, 2016, UCAN circulated via email its research into Commission proceedings in which records from one proceeding were imported into subsequent proceedings. SDG&E hereby responds to UCAN’s research email.

Ordinarily, testimony and other evidence are sponsored by a party, and opposing parties have an opportunity to object to those materials on various grounds. The Administrative Law Judge then rules on admissibility, and admissible documents are entered into the record. Here,

⁶ See “Prehearing Conference Statement of San Diego Gas & Electric Company” at 9-11.

however, UCAN seeks to bypass that procedure with respect to a significant volume of testimony and exhibits.

In the past, there were circumstances in which the Commission allowed evidence derived from other proceedings to be incorporated wholesale into a new proceeding by reference.⁷ But with the deletion of Rule 72 from the Commission's Rules of Practice and Procedure in 2006, the ability to incorporate evidence from another proceeding by reference was eliminated. Indeed, in D.06-07-006, *Opinion Adopting Amendments to the Rules of Practice and Procedure*, the Commission made this explicitly clear:

The deletion of Rule 72 does not bar the introduction of documents contained in the record of one proceeding into the record of another; it simply eliminates the ability to do so by reference, and instead requires parties to produce copies of such documents when offering them as exhibits. . . . In view of Rule 13.6(a) (old Rule 64) and Commission practice, which permit hearsay evidence (so long as the substantial rights of parties are preserved) and dispense with the formal foundation rules of evidence, there is no need for a special rule for documentary evidence from another Commission proceeding.

We also note that neither current Rule 72 nor its deletion permits testimony from another proceeding to be received by reference; testimony from another proceeding must be presented as an exhibit. By deleting Rule 72, we require the same treatment of non-testimony documents from another proceeding as for testimony from another proceeding.⁸

Thus, UCAN's request is inconsistent with the Commission's current practices and procedures.

⁷ Commission Rule of Practice and Procedure, Rule 72 (repealed in 2006), stated: "If any matter contained in a document on file as a public record with the Commission is offered in evidence, unless directed otherwise by the presiding officer, such document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of such document are specifically identified and are competent, relevant and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy thereof shall be presented as an exhibit, unless otherwise ordered by the presiding officer."

⁸ D.06-07-006 at 16-17.

In support of its argument, UCAN cites 11 Commission orders. As discussed below, those citations are misused or out of context, and thus would not serve as appropriate precedent for UCAN's request.

#	Case	UCAN Argument	SDG&E Response / Distinction
1	I.16-01-012	Page 15, Point 7. "The Safety and Enforcement Division Staff Report in this matter is hereby entered into the record for this proceeding."	Staff Report arose from a Safety and Enforcement Division ("SED") investigation, not a separate Investigation proceeding. The SED investigation was the basis for initiating I.16-01-012. I.16-01-012 at 1-3.
2	R.15-12-006	Page 10, Point 3. "Any and all informal comments previously provided in response to the Solicitation for Input (SFI) on the SFI pilot substance and process through the SFI Listserv, copies of which are attached as Attachment B, are hereby incorporated into the record in this proceeding and need not be repeated or refiled to be considered by the Commission in its decision in this proceeding."	SFI was not a formal proceeding. ("On January 28, 2015, Commission staff released an SFI inviting <i>informal</i> input from the public..." R.15-12-006 at 2.)(emphasis added). Additionally, R.15-12-006 considers a staff proposal which is part of the SFI program. Because the comments were provided in response to the SFI, these comments and R.15-12-006 are effectively the same proceeding. <i>See</i> R.15-12-006 at 1-3.

#	Case	UCAN Argument	SDG&E Response / Distinction
3	I.15-06-018	<p>Page 20, Point 6. “In that event, the assigned ALJ (or the Chief ALJ if no ALJ has yet been assigned) will schedule no hearing. Instead, the allegations in this OII will be deemed admitted and constitute this proceeding's record of evidence. A proposed order based on such record of evidence will be prepared to include findings of fact and conclusions of law, as well as any fines and penalties to be imposed on Respondents, and directing the General Counsel of the Commission to apply to the Los Angeles County Superior Court for judicial appointment of a receiver to assume possession and operation of Mesa-Crest and its water system.”</p> <p><u>Proposed use of record as evidence in future record.</u></p> <p>Page 22, Point 16. “The Staff Report and supporting documents prepared or attached by SED will be entered into the record for this proceeding.”</p> <p>Page 1. Staff from the Commission's Safety and Enforcement Division (SED) have prepared an investigative report (Staff Report) underlying this Order, and have compiled a number of documents supporting that Staff Report, which due to their volume are not being served with this Order but are available upon request.</p>	<p><u>Response to page 20, Point 6.</u></p> <p>This quote is out of context. The Commission provided this instruction only “if respondents failed to file a written statement within the time specified above, [and are therefore deemed] to have waived their right to a hearing.” I.15-06-018 at 20, OP 6.</p> <p><u>Response to Page 22, Point 16 and Page 1</u></p> <p>The Staff Report and supporting documents prepared or attached by SED arose from an SED investigation underlying the order. This investigation gave rise to the opening of a formal Investigation proceeding. I.15-06-018 at 1.</p>

#	Case	UCAN Argument	SDG&E Response / Distinction
4	R.15-05-006	<p>Page 8, Top. “Because this proceeding is a continuation of R.08-11-005, the record of R.08-11-005 is incorporated into the record of this proceeding by reference.”</p> <p><u>Incorporate prior record when current record is a continuance.</u></p>	Unlike R.15-05-006, the instant proceeding is not a continuance of any proceeding.
5	R.15-02-020	<p>Page 4, Section 1.1 “The record in Rulemaking (R.) 11-05-005 is transferred to this successor proceeding. Various issues remaining in R.11-05-005, discussed more fully in Section 2.1, below, are brought into this proceeding.”</p> <p><u>Transferred prior record to successor docket which was addressing ongoing oversight of a renewable portfolio standard program</u></p>	Unlike R.15-02-020, the instant proceeding is not a successor docket.
6	R.15-02-012	<p>Page 2, Top. “Today, we close R.13-02-019 and open this proceeding as its successor. We transfer the record from R.13-02-019 to this new proceeding and bring forward limited remaining issues.”</p> <p><u>Successor docket. Transferred to consider issues related to to the allocation of the annual revenue requirement determination of the California Department of Water Resources in connection with its procurement of electricity for the customers of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company</u></p>	The instant proceeding is not a successor docket.

#	Case	UCAN Argument	SDG&E Response / Distinction
7	R.13-12-010	<p>Page 21, Point 3. “This is a successor proceeding to the Commission’s procurement rulemaking, Rulemaking 12-03-014, with respect to long-term procurement plans and the record developed in that proceeding is fully available for consideration in this proceeding.”</p> <p><u>Successor proceeding. “In this proceeding, we shall consider unresolved issues from Rulemaking (R.) 12-03-014, including issues related to the overall long-term need for new system and local reliability resources.”</u></p>	The instant proceeding is not a successor proceeding.
8	R.12-11-005	<p>Page 15, Point 3. “The record in Rulemaking 10-05-004 is incorporated in this proceeding by reference, and any pending matters in that former rulemaking will be addressed in this new proceeding”</p> <p><u>This rulemaking is initiated to continue the work from Rulemaking (R.) 10-05-004 for the purpose of development and refinement of policies, rules and programs for the California Solar Initiative and the Self-Generation Incentive Program and to continue our consideration more generally of policies for the development of cost-effective, clean and reliable distributed generation.</u></p>	The instant proceeding is a new application, not intended to continue the work from other proceedings. Unlike R.12-11-005, outstanding matters from the WEBA and the OIIs were not intended to be “transferred” to the instant proceeding. Rather, it was made clear in WEBA and the OIIs that the settlements issue was out of the scope of those proceedings and should be resolved in a new and separate proceeding. D.12-12-029 at OP 3.

#	Case	UCAN Argument	SDG&E Response / Distinction
9	R.11-05-005	<p>Page 6, Middle. “In August 2008, we closed R.06-05-027 and opened R.08-08-009 to continue this work. Today we close R.08-08-009, and open this proceeding as its successor. We transfer the record from R.08-08-009 to this new proceeding and bring forward limited remaining issues.”</p> <p><u>Successor Proceeding.</u></p>	The instant proceeding is not a successor proceeding.
10	R.06-05-028	<p>Page 19, Point 10. “We hereby incorporate into the record of this new proceeding the record created in Rulemaking 06-05-028.”</p> <p><u>Revisions to California Universal Service Program.</u></p>	<p>This Order closed R.06-05-028, but instituted a successor proceeding to R.06-05-028. The successor proceeding was limited to examining revisions to the California LifeLine program. (March 24, 2011 OIR on Revisions to the California LifeLine Program, p. 2.)</p> <p>As above, the instant proceeding is not a successor proceeding.</p>

#	Case	UCAN Argument	SDG&E Response / Distinction
11	R.13-11-005	<p>Page 31, Point 12. “We have made a great deal of progress in energy efficiency in R.09-11-014. Much of the work performed in that proceeding is foundational, and will be used as a starting point for the current proceeding. There is no need to duplicate work or backtrack and revisit matters that have already been resolved in R.09-11-014. Therefore, we provide notice that the record of R.09-11-014 will be incorporated into this proceeding, as necessary. In addition, in A.12-07-001 et al., we have developed extensive record on energy efficiency financing pilots. While specific disposition of the considered pilots is addressed in D.13-09-044, we transfer the record into this proceeding to avoid duplication of work.”</p> <p><u>Transferred in order to prevent duplication of work or backtrack and revisit matters already solved.</u></p>	<p>Incorporation of records was qualified “as necessary”. In addition, R.09-11-014 and A.12-07-001 were “foundational” for R.13-11-005, whereas WEBA and the OIIs, while related, are not “foundational” to this proceeding. Many of the issues in WEBA and the OIIs are simply not issues in this case.</p>

In sum, UCAN inappropriately references proceedings that are continuances of or successors to earlier proceedings, mischaracterizes underlying reports as prior proceedings, or simply takes quotations out of context. Even if the Commission were to agree with UCAN’s mischaracterization of this precedent, in light of the deletion of Rule 72 and to uphold consistency with the Rules of Practice and Procedure, SDG&E urges the Commission to admit only testimony or evidence from the WEBA proceeding or the OIIs that is offered as an exhibit, in accordance with its standard procedures.

V. CONCLUSION

WHEREFORE, SDG&E requests that the Commission (1) adopt its proposed Phase 2 schedule; (2) resolve disputes about Phase 2 supplemental testimony in Phase 2; (3) adopt its proposed list of issues; and (4) deny UCAN's request to import wholesale records from prior proceedings into this proceeding.

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